# STATE OF MICHIGAN

# COURT OF APPEALS

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| PEOPLE OF THE STATE OF MICHIGAN,<br><br>Plaintiff-Appellee, | UNPUBLISHED<br>March 16, 2001 |
| v | No. 222467<br>Washtenaw Circuit Court |
| WILLIAM BLAKE CARTER,<br><br>Defendant-Appellant. | LC No. 97-008799-FH |

Before: Griffin, P.J., and Neff and White, JJ.

PER CURIAM.

Defendant was convicted by a jury of fourth-degree fleeing and eluding, MCL 750.479a; MSA 28.747(1). He was sentenced to two years' probation, and ordered not to drive a motor vehicle as a term of that probation. He appeals as of right and we affirm.

Defendant contends that his conviction for fourth-degree fleeing and eluding a police officer was based on insufficient evidence. We disagree.

MCL 750.479a; MSA 28.747(1), establishes five elements necessary to convict a defendant for fourth-degree fleeing and eluding: (1) the law enforcement officer must have been in uniform and performing his lawful duties and his vehicle must have been adequately identified as a law enforcement vehicle, (2) the defendant must have been driving a motor vehicle, (3) the officer, with his hand, voice, siren, or emergency lights must have ordered the defendant to stop, (4) the defendant must have been aware that he had been ordered to stop, and (5) the defendant must have refused to obey the order by trying to flee from the officer or avoid being caught.

Defendant challenges the sufficiency of the evidence to establish his identity as the driver and to establish that the driver intentionally fled the officers. In reviewing the sufficiency of the evidence presented at trial, we view the evidence in the light most favorable to the prosecution and determine whether a rational factfinder could conclude that the essential elements of the crime were proved beyond a reasonable doubt. *People v Terry,* 224 Mich App 447, 452; 569 NW2d 641 (1997). Questions of credibility are left to the jury. Our review of the record leads us to conclude that there was sufficient evidence on both issues.

After the vehicle stopped, both the passenger and driver ran from the vehicle. The driver ran behind his vehicle and in front of the police vehicle. As he ran in front of the police cruiser,

defendant was clearly visible due to the headlights, overhead lights, and spotlights that were turned on the suspect's car. The driver then ran into the neighborhood bordering the road. A third state police trooper testified that he was in the area when a police broadcast came over the radio. The trooper saw an individual matching the broadcast description run across the street in front of his vehicle. He followed the suspect and attempted to catch the individual on foot. He did not catch the individual, went back to his vehicle, and then noticed defendant walk up onto the porch of a home with a group of people. The trooper walked over to the porch and asked defendant to come over to him. Defendant did so, and the trooper noticed that defendant's breathing was labored and recognized him as the person he had been chasing. When defendant was brought back to the two troopers who had stopped the car, he was identified as the driver.

Viewed in the light most favorable to the prosecution, there was ample evidence from which to conclude that defendant was the driver.

We further conclude that the evidence was sufficient to prove (1) that the troopers ordered the driver to stop the vehicle, (2) that the driver of the vehicle was aware of the troopers' order, and (3) that the driver refused to stop the vehicle. There was testimony that the trooper who was driving the police vehicle activated the overhead lights as the white Oldsmobile exited Interstate 94 at the Huron Road exit, that the driver increased the vehicle's speed after the lights and siren were activated, and that the vehicle continued onto Huron Street and made a left turn at the first light. The driver and passenger both ran from the vehicle after it finally stopped. While there was no direct evidence that the driver was aware of the order to stop, the circumstantial evidence and the reasonable inferences which arise from it sufficiently establish that the driver intentionally disregarded an order to stop.

Defendant also contends, in the context of his sufficiency argument, that the trial court reversibly erred in excluding testimony concerning whether defendant owned the vehicle. Evidentiary rulings are subject to a harmless-error analysis. *People v Price*, 214 Mich App 538, 546; 543 NW2d 49 (1995). A preserved, nonconstitutional error is not ground for reversal "unless after an examination of the entire cause, it shall affirmatively appear that it is more probable than not that the error was outcome determinative." *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999). In this case, even assuming that the ruling by the trial court was error, the error did not affect the outcome of the trial.

Defendant next contends that he is entitled to a new trial because, although there had been a pre-trial discovery order, it was not revealed until mid-trial that the trooper who chased him had prepared a police report. We do not agree.

This Court, in *People v Lester*, 232 Mich App 262; 591 NW2d 267 (1998), discussed the implications of a failure by the prosecution to comply with a discovery request made by a defendant. In that case, the defendant claimed prejudice due to the prosecution's failure to disclose certain information concerning witnesses which could have been used as impeachment evidence against them during their testimony. *Id*. at 280-281. This Court stated:

> [i]n order to establish a *Brady* [*v Maryland*, 373 US 83; 83 S Ct 1194; 10 L Ed 2d 215 (1963)] violation, a defendant must prove: (1) that the state possessed evidence favorable to the defendant; (2) that he did not possess the evidence nor

> could he have obtained it himself with any reasonable diligence; (3) that the prosecution suppressed the favorable evidence; and (4) that had the evidence been disclosed to the defense, a reasonable probability exists that the outcome of the proceedings would have been different. [*Lester, supra*, 232 Mich App at 281-282.]

Here, defendant has not shown that the delay in disclosing the report affected the outcome of the trial. The statements in the report were used to impeach the trooper who prepared the report by pointing out discrepancies between his report and his earlier testimony. Given that defendant was provided an opportunity to use the late-disclosed report and that the information disclosed was relevant to the witness' credibility but not otherwise material to the case, we conclude that defendant was not denied his due process rights by the late disclosure of the report.

Defendant also asserts that the trial court exceeded its authority when it ordered defendant not to drive a motor vehicle for the length of his two-year probation. Defendant relies on the provision of MCL 750.479a; MSA 28.747 that requires the sentencing court to order the secretary of state to suspend the convicted individual's license for one year. We find no abuse of discretion by the trial court.

"It is well settled that probation is a matter of grace, not of right. Whether probation is to be granted, and its conditions, are determinations that rest in the sound discretion of the trial court based upon authority provided by the Legislature." *People v Whiteside*, 437 Mich 188, 192; 468 NW2d 506 (1991). A sentencing court is authorized to "impose other lawful conditions of probation as the circumstances of the case require or warrant or as in its judgment are proper." MCL 771.3(4); MSA 28.1173(4). Thus, only if the condition is unlawful or unwarranted given the facts of the case can a defendant prove that the court has abused its discretion to set the terms of probation.

There is no reason to conclude that the fleeing and eluding statute, which mandates a one-year suspension of the driver's license of a person convicted of that crime, preempted the broad authority the Legislature granted courts to set the terms of probationers. See *People v Dickens*, 144 Mich App 49, 56; 373 NW2d 241 (1985). Indeed, we do not believe that the fleeing and eluding statute is even inconsistent with the sentence imposed in this case under the probation statute. Although defendant argues that the statute allows only a one-year suspension of his license, while the trial court suspended the license for two, it appears that in fact the trial court merely prohibited defendant from driving for two years. Nowhere in the sentencing transcript does it appear that the trial court suspended defendant's license for two years. In any event, a primary goal of statutory construction is to read statutes to avoid conflict with each other. *People v Webb*, 458 Mich 265, 274; 580 NW2d 884 (1998). Doing so in this case leads us to the conclusion that the Legislature intended the trial court to have discretion to set the terms of a defendant's probation as well as mandating at least a one-year suspension of a defendant's driving license upon being convicted of fourth-degree fleeing and eluding. Thus, defendant's probation term is not unlawful, and we find no error.

Affirmed.

/s/ Richard Allen Griffin
/s/ Janet T. Neff
/s/ Helene N. White